

REMARKS

I. Status of the Claims

Claims 1-77 are rejected. Claims 1, 45, and 63 are cancelled herein.

II. Specification

The Examiner states that “[t]he abstract of the disclosure is objected to because it is too long.” *See* Office Action at page 2.

Applicants hereby amend the Abstract, and thus respectfully request withdrawal of this objection.

The Examiner also states that “[t]he title of the invention is not descriptive.”

Applicants hereby amend the title, and respectfully request withdrawal of this objection.

III. Rejections Under 35 U.S.C. § 112, ¶ 2

The Examiner rejected claims 1-77 “under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” *See* Office action at pages 2-5. Applicants respectfully traverse these rejections.

i. The Examiner states that “said plurality of computing devices” in claims 7-8 lacks antecedent basis. Applicants respectfully note that claim 7 does not include “said plurality of computing devices.” Claim 8 is amended to address a typographical error, but not to change the scope of the claim.

ii. The Examiner states that “said priority indication” in claim 35 lacks antecedent basis. Applicants respectfully note that claim 35 recites “a priority indication” before “said priority indication.”

iii. Claim 63 is cancelled herein.

Applicants respectfully submit that the remainder of the Examiner’s comments concerning the § 112 rejections (*i.e.*, items iv – xxv) appear inconsistent with MPEP § 2173. “A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers.” MPEP § 2173.01. The MPEP, at section 2173.02, further explains:

The examiner’s focus during examination of claims for compliance with the requirement for definiteness of 35 U.S.C. 112, second paragraph, is whether the claim meets the threshold requirements of clarity and precision, not whether more suitable language or modes of expression are available. ... *Some latitude in the manner of expression and the aptness of terms should be permitted even though the claim language is not as precise as the examiner might desire.* ... Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (A) The content of the particular application disclosure; (B) The teachings of the prior art; and (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made. ... The test for definiteness under 35 U.S.C. 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.”

Orthokinetics, Inc. v. Safety Travel Chairs, Inc., 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). [Emphasis added by Applicants.]

In addition, “[b]readth of a claim is not to be equated with indefiniteness.” MPEP § 2173.04. Applicants respectfully refer the Examiner to the application, particularly at paragraphs 145-157 and Figures 12(a) – 14, for example. Applicants also respectfully submit that those skilled in the art would understand what is claimed when the claims are read in light of the specification.

Applicants therefore respectfully request withdrawal of the rejections under § 112, ¶ 2 and allowance of the claims.

IV. Rejections Under 35 U.S.C. § 103(a)

A. Rajkumar

The Examiner rejected claims 1-3, 22, 26-28, 35-36, 38, 41-47, 55-56, 60-63, 70-71, 73, and 76-77 “under 35 U.S.C. 103(a) as being unpatentable over Rajkumar (US PG Pub No. US 2003/0061260 A1).” *See* Office action at pages 6-11. Applicants respectfully traverse these rejections.

Claims 1 and 45 are cancelled herein. Claim 39 is amended to include original, independent claim 1. Claim 74 is amended to include original, independent claim 45.

Claims 2-3, 22, 26-28, 35-36, 38, and 41-43 depend from claim 39, which Applicants respectfully submit is patentable for at least the reasons explained below (*see* pages 22-25).

Amended claim 44 recites a system that includes (1) means for receiving one or more reservations for use of at least a first subset of a plurality of computing resources of a distributed computing system, wherein each of the reservations specifies a period of time for use of the computing resources; (2) means for allocating the first subset of the computing resources for use in accordance with the reservations; (3) means for receiving one or more requests for use of at least a second subset of the computing resources of the distributed computing system, wherein each of the requests specifies a period of time for use of the computing resources and wherein each of the requests includes a bid indication; (4) means for determining whether a sufficient amount of one or more unallocated computing resources are available to fulfill all of

the requests, wherein the unallocated computing resources include the computing resources of the distributed computing system that are not allocated in accordance with the reservations; (5) means for allocating the unallocated computing resources in accordance with the requests and in response to a sufficient amount of the unallocated computing resources being available; and (6) means for allocating the unallocated computing resources in accordance with an allocation criteria and in response to a sufficient amount of the unallocated computing resources not being available, wherein the allocation criteria considers the bid indication of each request.

Applicants respectfully submit that amended claim 44 is patentable for at least the reasons explained below (*see* pages 22-25).

Claims 46-47, 55-56, 60-62, 70-71, 73, and 76-77 depend from claim 74, which Applicants respectfully submit is patentable for at least the reasons explained below (*see* pages 25-26).

B. Rajkumar in View of Schweitzer

The Examiner rejected claims 4-21, 29-34, 48-54, 64-69, and 72 “under 35 U.S.C. 103(a) as being unpatentable over Rajkumar (US PG Pub No. US 2003/0061260 A1) in view of Schweitzer et al. (US Pat No. 6,418,467 hereinafter Schweitzer).” *See* Office action at pages 11-15. Applicants respectfully traverse these rejections.

Claims 4-21, 29-34, and 37 depend from claim 39, which Applicants respectfully submit is patentable for at least the reasons explained below (*see* pages 22-25).

Claims 48-54, 64-69, and 72 depend from claim 74, which Applicants respectfully submit is patentable for at least the reasons explained below (*see* pages 25-26).

C. Rajkumar in View of Ahamed

The Examiner rejected claims 23-25 and 57-59 “under 35 U.S.C. 103(a) as being unpatentable over Rajkumar (US PG Pub No. US 2003/0061260 A1) in view of Ahamed et al. (US Pat No. 5,978,831 hereinafter Ahamed).” See Office action at pages 15-16. Applicants respectfully traverse these rejections.

Claims 23-25 depend from claim 39, which Applicants respectfully submit is patentable for at least the reasons explained below (*see* pages 22-25).

Claims 57-59 depend from claim 74, which Applicants respectfully submit is patentable for at least the reasons explained below (*see* pages 25-26).

D. Rajkumar in View of Thomas

The Examiner rejected claims 39-40 and 74-75 “under 35 U.S.C. 103(a) as being unpatentable over Rajkumar (US PG Pub No. US 2003/0061260 A1) in view of Thomas et al. (US Pat No. 6,301,574 hereinafter Thomas).” See Office action at pages 16-17. Applicants respectfully traverse these rejections.

Amended claim 39 is directed to a method that includes (1) receiving one or more reservations for use of at least a first subset of a plurality of computing resources of a distributed computing system, wherein each of the reservations specifies a period of time for use of the computing resources; (2) allocating the first subset of the computing resources for use in accordance with the reservations; (3) receiving one or more requests for use of at least a second subset of the computing resources of the distributed computing system, wherein each of the requests specifies a period of time for use of the computing resources; (4) determining whether a sufficient amount of unallocated computing resources are available to fulfill all of the requests,

wherein the unallocated computing resources includes the computing resources of the distributed computing system that are not allocated in accordance with the reservations; responsive to a sufficient amount of the unallocated computing resources being available, allocating the unallocated computing resources in accordance with the requests; and responsive to a sufficient amount of the unallocated computing resources not being available, allocating the unallocated computing resources in accordance with an allocation criteria, wherein the requests each comprise a bid indication, and wherein the allocation criteria considers the bid indication of each request.

For at least two principal reasons, the Examiner has not met the burden of showing a *prima facie* case of the obviousness of the claims rejected under § 103.

First, Applicants respectfully submit that Rajkumar and Thomas, alone or in combination, fail to disclose or suggest at least ***receiving one or more reservations for use of at least a first subset of a plurality of computing resources of a distributed computing system wherein said one or more requests each comprise a bid indication and wherein said allocation criteria considers said bid indication of each said request***, as recited in claim 39. The United States Supreme Court recently reaffirmed that “a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KRS Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). Thus, even if a person of ordinary skill in the art would have been motivated to combine aspects of the Rajkumar and Thomas references (which Applicants do *not* concede), such a combination could not include each and every limitation of claim 39. Applicants thus respectfully submit that the Examiner’s proposed combination of references does not establish a *prima facie* case of obviousness for claim 39.

In particular, the Examiner admits that *Rajkumar* “does not teach that said one or more requests each comprise a bid indication, and wherein said allocation criteria considers said bid indication of each said request by fulfilling said requests beginning with said request comprising a highest bid indication and continuing in descending order of requests comprising said bid indications of lesser values until all of said unallocated resources have been allocated.” See Office action at page 17.

With regard to *Thomas*, the Examiner states: “Thomas describes a method of bidding and contrasting the bid information in order to improve pricing due to substantial competition (col 1 lines 52-55 and col 2 lines 22-33).” See Office action at page 17.

But Applicants respectfully submit that Thomas does not disclose or suggest submitting a bid along with a request for allocation of computing resources of a distributed computing system. The “Background of the Invention” portion of Thomas explains:

The invention relates in general to an apparatus, method and data structure for providing business information, including outsourcing information, to assist businesses in meeting their needs for providing and obtaining a variety of services. More particularly, *the invention relates to an apparatus, method and data structure for facilitating communications between contractors and outsourcing companies* that include marketing and search mechanisms, bid management, contractor and outsourcing company assessment, and other various features.

Thomas at column 1, lines 6-15 (emphasis added by Applicants). Column 1, lines 52-55 states only – in the context of outsourcing, not computer-system design – that “there is a need for an invention which greatly reduces the time required to identify and procure services, improves pricing due to substantial competition, and accomplishes these goals at competitive prices.” And column 2, lines 22-23 concerns communicating outsourcing

information between an outsourcing company and a plurality of contractors – not submitting a request for computing resources.

Second, even if some combination of features from Rajkumar and Thomas disclosed all aspects of the method of claim 39 (which Applicants do not concede for at least the reasons mentioned above), Applicants respectfully submit that a person of ordinary skill in the art would not have combined Rajkumar (a patent application concerning resource management in a data processing system) and Thomas (a patent about facilitating communications between contractors and outsourcing companies) in the manner the Examiner suggests to achieve the method of claim 39.

The Examiner states: “It would have been obvious to one of ordinary skill in the art at the time of the invention to include a bid indication with each request and allocating resources accordingly [and] [o]ne would be motivated by the desire to increase revenue as a result of competition as described by Thomas.” *See* Office action at page 17. But Applicants respectfully submit that here, the Examiner uses the claims as a guide by seeking to combine aspects of Rajkumar and Thomas.

The Supreme Court’s *KSR v. Teleflex* decision reaffirmed that it is impermissible to engage in “hindsight reconstruction,” *i.e.*, using the recited invention as a guide to combine or modify teachings from prior art references:

A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon *ex post* reasoning. *See Graham*, 383 U.S., at 36, 86 S.Ct. 684 (warning against a “temptation to read into the prior art the teachings of the invention in issue” and instructing courts to “‘guard against slipping into the use of hindsight’” (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F.3d 406, 412 (C.A.6 1964))).

KSR, 127 S. Ct. at 1742.

Applicants thus respectfully submit that the Examiner has not provided evidence sufficient to meet the burden of making a *prima facie* showing that a person of ordinary skill would have combined the cited references – which are from distinctly different technology areas – to achieve the method of claim 39.

Claim 40 depends from claim 39, and thus include the limitations of claim 39.

Claim 74 is directed to a system that includes a distributed computing system with a plurality of computing resources and a computing device configured to: (1) receive one or more reservations for use of at least a first subset of the computing resources, wherein each of the reservations specifies a period of time for use of the computing resources; (2) allocate the first subset of computing resources for use in accordance with the reservations; (3) receive one or more requests for use of at least a second subset of the computing resources of the distributed computing system, wherein each of the requests specifies a period of time for use of the computing resources; (4) determine whether a sufficient amount of the unallocated computing resources are available to fulfill the requests, wherein the unallocated computing resources includes the computing resources of the distributed computing system that are not allocated in accordance with the reservations; (5) responsive to a sufficient amount of the unallocated computing resources being available, allocate the unallocated computing resources in accordance with the requests; and (6) responsive to the sufficient amount of the unallocated computing resources not being available, allocate the unallocated computing resources in accordance with an allocation criteria, wherein the requests each include a bid indication, and wherein the allocation criteria considers the bid indication of each request.

Applicants respectfully submit that Rajkumar and Thomas, alone or in combination, fail to disclose or suggest at least a distributed computing system with a computing

device configured to *receive one or more reservations for use of at least a first subset of a plurality of computing resources of a distributed computing system wherein said one or more requests each comprise a bid indication and wherein said allocation criteria considers said bid indication of each said request*, as recited in claim 74.

E. Original Independent Claims 44 and 45

The Office action does not address original claims 44 and 45 separately from claim 1, although Applicants respectfully note that claims 44 and 45 are separate and distinct from claim 1 and from each other (and that amended independent claims 44 and 74 are distinct from claim 39). Because the Office action does not fully explain the basis for rejection of original claims 44 and 45, Applicants respectfully request withdrawal of the § 103 rejections

For at least the aforementioned reasons, Applicants submit that claims 2-44, 46-62, and 64-77 are not obvious in view of any combination of the cited references. Applicants thus respectfully request that the rejections of these claims under 35 U.S.C. § 103 be withdrawn, and that the pending claims be allowed.

V. Conclusion and Request for Reconsideration

Applicants request reconsideration of the present application in view of the aforementioned amendment and remarks. Although other features of the claims in the present application are also significant, Applicants respectfully submit that the pending claims are allowable for at least the aforementioned reasons. Accordingly, Applicants respectfully request that the rejections under §§ 112 and 103(a) be withdrawn, and that the pending claims be allowed.

In the event that a telephone conference would advance examination of this application, the Examiner is invited to contact the undersigned at the number provided.

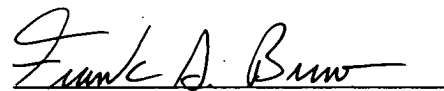
VI. Authorization

Applicants respectfully submit that no fee is due in connection with this paper. But in the event the Commissioner determines that an extension of time or fee is due for this paper, the undersigned hereby petitions for any required extension of time and authorizes the Commissioner to charge any fee required to Milbank's deposit account no. 13-3250, order no. 36287-03400. A DUPLICATE COPY OF THIS PAGE IS ENCLOSED HEREWITH.

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Respectfully submitted,
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